



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number **201217021**  
Release Date: 4/27/2012  
Date: February 2, 2012  
UIL Number:  
501.03-07

Contact Person:  
  
Identification Number:  
  
Contact Number:  
  
Employer Identification Number:  
  
Form Required To Be Filed:  
  
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: December 14, 2011

UIL Number:  
501.03-07

Contact Person:

Identification Number:

Contact Number:

Fax Number:

Employer Identification Number:

LEGEND:

Taxpayer =  
State =  
Date1 =  
Date2 =  
Date3 =  
Individuals =  
Place =  
Year =  
x1 =  
x2 =  
x3 =  
x4 =  
Project =  
Firm =

Dear

We have considered your application for recognition of exemption from Federal income tax under § 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(3). The basis for our conclusion is set forth below.

FACTS:

You were incorporated as a nonprofit corporation in State on Date1. You filed a Form 1023 seeking exemption from taxation under § 501(c)(3). According to your Articles of Incorporation, you were formed:

1. To promote meaningful access to our system of justice, educational institutions, and medical care;
2. To educate and enrich the quality of life within our multicultural community by helping individuals and groups recognize their similarities, appreciate their

differences, and understand that they share a common destiny in promoting multicultural community by helping individuals and groups recognize their similarities, appreciate their differences, and understand that they share a common destiny in promoting a just and fair society; and

3. To advocate for civil rights and employment rights and to develop leadership skills in young people who show an interest in promoting civil rights and employment rights.

Your narrative statement provides that your “dominant purpose . . . is to help provide meaningful access to our system of justice, educational institutions, and medical care.” You list three activities that will further your purposes. First, you intend to work with adolescents who exhibit an interest in civil and employment rights. Second, you are working with a neighborhood organization, Project, in order to raise money to pay the medical bills of two children. And third, you are raising funds to pay for the out-of-pocket travel expenses of attorneys in State who will provide pro bono legal services to Individuals.

You state that you intend to work with adolescents who exhibit an interest in civil and employment rights. You may conduct this activity with the cooperation of other organizations that already “work with young people.” You will raise money in furtherance of this purpose, which will be used to pay individuals and organizations that provide leadership training. In your Date2 letter, you explain that leadership training will be provided by “local labor leaders, civil rights leaders, community leaders and teachers.” You state that “no fees will be charged and if there are fees they would be minimal and limited to helping cover the expense of materials and educational trips.” You did not submit any additional information regarding this activity, including the types of students that you will provide with training, how you will identify those students, the types of training they will be provided with, and the curriculum for the training. Currently, you do not spend any of your time on this activity and did not estimate the percentage of your time that will be spent on this activity in the future.

In your Date2 letter you also state that ten percent of your activities consist of supporting fundraising activities for Project, which, according to your Date3 letter, is raising funds for the medical expenses of two neighborhood children. Initially your involvement with Project was focused on raising funds to pay the medical bills of one child. You state that you intend to “make some distributions of [your] funds to individuals, but such distributions will not be limited to one family or a pre-determined or selected group of individuals.”

A local committee of neighbors made the decision about assisting with the medical bills. In your initial application, the beneficiary of the support was limited to one predetermined individual. You did not have guidelines for determining the recipients of these distributions. In your Date2 letter, you provided that you will maintain records that will demonstrate how recipients were selected and that you would expand the class of individuals. Your Date3 letter states that two individuals have received assistance with medical bills. However, you did not provide any information on how the second individual was selected, how much assistance the individual received, the time frame during which the individual received assistance, and whether you were still providing assistance to the individual. Furthermore, you did not provide any guidelines for

determining future recipients of these distributions or state whether you intended to increase the number of recipients beyond these two. As of Date3, you have raised \$ x1 for Project.

You state that your third activity of raising funds to pay for the out-of-pocket expenses of attorneys who are providing pro bono legal services to Individuals constitutes about ninety percent of your time. An attachment to your letter of Date2 provides a breakdown of expenses, including air travel, hotel and meals. However, you did not provide any guidelines demonstrating which fees would be reimbursable to the attorneys. In your letter of Date3, you provide that these activities will continue through "the end of Year and possibly for another year after that." Currently, you are aiding four attorneys. Of these four attorneys, two are on your Board of Directors. You plan on reimbursing Firm, which is partially comprised of all of your directors, for expenditures associated with the pro bono representation of Individuals. While you have audit procedures for such distributions, those procedures can be waived by two-thirds of your Board who are all partners at Firm.

In addition to your listed activities, you described additional activities that will be conducted by Project. For example, you state that Project has started new vegetable gardens, is coordinating with another organization exempt from Federal taxation under § 501(c)(3) on a 5K run, and is considering creating a nature trail. However, you do not fully describe your involvement with these other activities of Project.

In your Date3 letter, you provided some information regarding your fundraising. You state that you have raised \$ x2. Of that, \$ x1, one-fifth of \$ x2, was spent on Project, and \$ x3, less than two percent of \$ x2, was spent on your pro bono activities to Individuals. The remaining \$ x4 has not been used. You did not submit any details on how you anticipate using the remaining funds.

While your Bylaws provide for up to seven members on your Board of Directors, you currently have only three directors. These three members are "lifetime members of the Board of Directors" according to your Bylaws. These three individuals are also business partners in Firm.

#### LAW:

Section 501(c)(3) of the Code provides an exemption for corporations organized and operated exclusively for religious, charitable, scientific literacy, or educational purposes, no part of the net earnings of which inures to the benefit of any shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") states that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the

Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Proc. 2011-9, 2011-2 I.R.B. 283, provides in part that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere statement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

Rev. Rul. 69-545, 1969-2 C.B. 117 holds that operating under the control of one person or a small, related group suggests that an organization operates primarily for non-exempt private purposes, rather than exclusively for public purposes.

Rev. Rul. 67-367, 1967-2 CB 188, holds that a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the “presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes.”

In Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 412 F.2d 1197 (1969), cert. denied, 397 U.S. 1009 (1970), the Supreme Court examined whether an organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries.

In New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), the court, in denying an organization tax exempt status under § 501(c)(3), found that the organization was operated for personal rather than public benefits after reviewing the organization's promotional materials, actions, finances, and records of activities. The court, in reviewing whether the taxpayer had modified its activities, noted that gaps in the record may be resolved against the taxpayer since the burden is on the taxpayer to provide evidence that it meets the requirements of § 501(c)(3).

In Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531, 534 (1980), *aff'd*, 670 F.2d 104 (9th Cir. 1981), the court denied exemption to an organization controlled by a small number of individuals in part because those individuals were in a “position to perpetuate . . . control of [taxpayer's] operations and activities indefinitely.”

In La Verdad v. Commissioner, 82 T.C. 215 (1984) an organization that merely made statements as to its intended purposes without supplying any concrete information as to how it proposed to carry out those purposes did not qualify for exemption under § 501(c)(3).

In American Campaign Academy v. Commissioner, 92 T.C. 1053, 1067-1073 (1989), the court determined that an organization providing training for individuals specifically to work on Republican campaigns was providing prohibited private benefit. In making this determination the court stated that the presence of earnings inuring to the benefit of a private shareholder were not necessary, prohibited private benefit can be gained by an unrelated third party, that a determination of private benefit must examine the charitable nature of the class, and that size alone will not convert a noncharitable class into a charitable one.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 T.C.M. (CCH) 905 (1943), a trust established for the benefit of an aged clergyman and his wife was a private trust and not an exempt activity despite the fact that the two individuals served were needy.

In Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, 52 T.C.M. (CCH) 51 (1986), the organization was created by the Parker family to aid an open-ended class of “victims of coma.” However, the organization stated that it anticipated spending percent of its income for the benefit of Wendy Parker, significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under § 1.501(c)(3)-1(d)(1)(ii). Therefore, the Foundation was not exempt from federal income tax under § 501(c)(3).

In Share Network Foundation v. Commissioner, 78 T.C.M. (CCH) 6 (1999) the Court provided that an organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax exempt status.

#### ANALYSIS:

To qualify for exemption under § 501(c)(3), a taxpayer must demonstrate that it is organized and operated exclusively for exempt purposes. § 1.501(c)(3)-1. Even though some of your activities may have a charitable purpose within the meaning of § 501(c)(3), your assets and income might inure to the benefit of your founders. See Better Business Bureau, 326 U.S. at 283. Additionally, you have not fully described your activities in sufficient detail to demonstrate that you meet the requirements of § 501(c)(3).

The burden is on the taxpayer to demonstrate that it is organized and operated for exempt purposes, which includes demonstrating that its net earnings do not inure to private



shareholders or individuals and that it does not benefit private interests, such as designated individuals, the creator or his family, the shareholders of the organizations, or persons controlled, directly or indirectly, by such private interests. See, e.g., Founding Church of Scientology, 412 F.2d at 1200, 1202; Bubbling Well Church of Universal Love, 74 T.C. at 535; Share Network Foundation, 78 T.C.M (CCH) at 4-5.

The Internal Revenue Service has previously determined that control of an organization by a single person, or by even a small related group of individuals, suggests that an organization is operated primarily for non-exempt private purposes. See e.g., Rev. Rul. 69-545, supra; see also Bubbling Well Church of Universal Love, 74 T.C. at 534. Like the organization described in Rev. Rul. 69-545, supra, you are under the control of a small group of individuals.

Currently your board of directors is controlled by three related individuals, who have been given a lifetime appointment to your board. These three directors are also the named partners of Firm. Currently two of your three directors are performing legal services for Individuals and you will reimburse them and Firm for their out-of-pocket expenditures. However, you do not have guidelines for determining, or limiting the amount of funds received by these directors. Additionally, you do not have guidelines as to what expenses will or will not be reimbursed. As such, you have not demonstrated that you are not operated for the benefit of your directors.

In addition to the activities listed above, you are also organized and operated in substantial part to conduct fundraising activities for the benefit of pre-selected recipients. Your fundraising on behalf of two designated individuals is like the activities described in Carrie A. Maxwell Trust, 2 T.C.M. 905, which held that a trust established to benefit a needy clergyman and his wife was not exempt. The trust benefited private individuals rather than the general public. A similar result was reached in Rev. Rul. 67-367, supra, where an organization paid scholarships to pre-selected individuals. In both situations an organization was found to not be exempt due to payments to pre-determined specific individuals. You have selected two individuals to receive medical payments from you without providing information as to the guidelines of selecting those individuals and without providing information on payments to other individuals meeting those guidelines such that you would be providing a public rather than a private benefit.

Your medical expense activity is also analogous to those in Wendy Parker, 52 T.C.M. 51. In that case, an organization formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately thirty percent of the organization's net income was expected to be distributed to aid the family of a specific coma victim. The organization provided funds for the support of an unspecified number of other coma patients, of which there was no shortage, and to organizations that also supported coma patients generally. The Tax Court found that the family of the coma victim was a substantial beneficiary of the foundation's funds. The court noted that, "the [family's] control over petitioner is not in itself fatal to petitioner's cause. However, petitioner's selection of Wendy Parker as a substantial beneficiary of its disbursements is the determinative factor in this case." Wendy Parker, 52 T.C.M. at 54. Those receiving a private benefit do not have to be related to the organization in order for there to be a prohibited private benefit. See American Campaign Academy, 92 T.C. at 1067-68.

While none of the family members of the individuals receiving benefits sit on your board of directors, you are providing monetary support for medical care to a pre-determined select class



of two individuals. You represent that one fifth of your total current funds and ten percent of your time have been provided for the support of these pre-determined individuals. Furthermore, while the court looked favorably on the petitioner's provision of information on guidelines used for determining who received funds as well as information regarding other beneficiaries of its funds, you have not provided any information as to either category. As such, you are operated for their private interests.

Even if you were not operated for private interests, you have not provided sufficient detail to conclude that you are operated for an exempt purpose. Under Rev. Proc. 2011-9, 2011-2 I.R.B. 283, exempt status will be recognized in advance of operations if the proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. An organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. The organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax exempt status. Information that is vague or nonspecific is not sufficient to meet the requirements under § 501(c)(3). See Share Network Foundation v. Commissioner, 78 T.C.M. (CCH) 6 (1999).

Exempt status may be denied based solely upon the applicant's failure to describe in adequate detail how it will satisfy the operational test. See La Verdad, 82 T.C. 215 (1984) (finding that an organization that merely made statements as to its intended purposes without supplying any concrete information as to how it proposed to carry out those purposes did not qualify for exemption). An application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3)." Bubbling Well Church of Universal Love, 74 T.C. at 535. See also, Founding Church of Scientology, 188 Ct. Cl. at 498. Any gaps contained in the administrative record are resolved in favor of the Service. New Dynamics Foundation, 70 Fed. Cl. at 802 ("It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant").

You have failed to provide information regarding several of your activities. You state that you will provide leadership training to youths but do not describe any program to such end, and you state that no amount of your time is going toward such goal. You have stated that the individuals receiving medical benefits will be a broader class and that you will have standards for determining who is eligible to receive funds, but you have not provided any guidelines for determining the recipients of the funds and ensuring the charitable nature of the grants. You have also not provided any information as to additional recipients that may qualify or where you will seek out or solicit applications from such recipients. You provided a list of activities that Project, an organization that is separate from you, will engage in but do not describe your specific involvement in these activities. You state that you will reimburse out-of-pocket expenses for attorneys providing pro-bono work for Individuals in Place, but you do not provide guidelines for ensuring the charitable nature of these reimbursements such as what expenses qualify or how an applicant seeks reimbursement. The logical inference from these gaps is that, if revealed, they would indicate a failure to satisfy the operational test. See Bubbling Well

Church of Universal Love, 74 T.C. 531. As such, you are not operated exclusively for exempt purposes.

**CONCLUSION:**

Accordingly, you do not qualify for exemption as an organization described in § 501(c)(3) and you must file federal income tax returns.

Contributions to you are not deductible under § 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

**Your protest statement should be accompanied by the following declaration:**

**Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.**

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE (SE:T:EO:RA:T:2)

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois Lerner  
Director, Exempt Organizations